



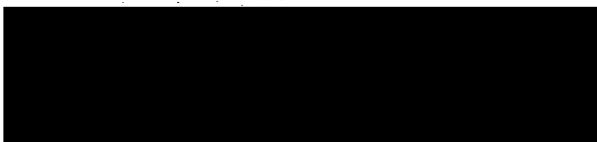
U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536



FILE:



Office: Miami

Date:

MAY 10 2000

IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

11501100-0-107110

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant submits a notice of discharge from probation and states that he already paid for the crime he committed in 1991.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On March 5, 1981, in Dade County, Florida, Case No. 81-210204, the applicant was convicted of petit theft, and he was fined \$50.

2. On January 5, 1985, in Dade County, Florida, the applicant was arrested and charged with aggravated assault (4 counts), and carrying concealed weapon (firearm). The aggravated assault charges were subsequently reduced to assault (4 counts). On February 19, 1985, the applicant was convicted of 4 counts of assault and carrying concealed weapon (firearm), and he was placed on probation for a period of 6 months, concurrently.

3. The record contains a sworn statement made before an officer of the Service on July 23, 1985, in which the applicant claims he was arrested in Cuba in 1976 for being an accomplice in a robbery, and that he was convicted and sentenced to 12 years imprisonment. He stated that he loaned his truck to 3 friends who robbed an office \$12,000 pesos, and while his friends were robbing the office, he kept a look-out for the police.

It was held in Matter of Doural, 18 I&N Dec. 37 (BIA 1981), that where there is reason to believe, by an alien's own admission or otherwise, that there has been a conviction and that the underlying crime involved moral turpitude, the burden is on the applicant for admission to establish that he is not inadmissible under section 212(a)(9) of the Act (now section 212(a)(2)(A)(i)(I) of the Act), and a finding of inadmissibility need not be supported by a record of conviction. In order for a foreign conviction to serve as the basis for a finding of inadmissibility, the conviction must be for conduct which is deemed criminal by United States standards. Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978). Robbery is a crime involving moral turpitude. Matter of Martin, 18 I&N Dec. 226 (BIA 1982); Matter of Romandia-Herrerros, 11 I&N Dec. 772 (BIA 1966); Matter of Rodriguez-Palma, 17 I&N Dec. 465 (BIA 1980).

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraph 1 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966). Assault with intent to do great bodily harm is a crime involving moral turpitude (paragraph 2 above). Matter of P-, 3 I&N Dec. 5 (A.G. 1947); see also Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Carrying a concealed and deadly weapon (with intent to use) is also a crime involving moral turpitude (paragraph 2 above). Matter of S, 8 I&N Dec. 344 (BIA 1959). In this case, the Miami police report shows on January 5, 1985, officers were summoned to a residence regarding a domestic disturbance. The officer observed the applicant running and while the officer was in the process of apprehending the applicant, the police dispatcher was simultaneously trying to advise the officer that she was receiving an aggravated battery in progress at the residence in which a white

male is beating a white female with a handgun. Upon apprehension and search of the applicant, a gun was found inserted in the waistband of his pants on his right hip. The victim, her brother, and her parents state that the applicant threatened them by pointing and waving the handgun at them.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude.

4. On November 30, 1994, in the United States District Court, Middle District of Florida, Case No. 94-35-CR-FTM-25, the applicant was convicted of conspiracy to possess with intent to distribute cocaine. He was sentenced to imprisonment for a term of time served and upon release from imprisonment, to be placed on supervised release for a term of 4 years and to perform 150 hours of community service. The applicant subsequently submits a letter from the United States District Court Probation Officer indicating that he was discharged from probation on November 22, 1998.

5. The record of proceeding shows that on January 16, 1986, during a traffic stop at a rest area near Bossier Parish, Louisiana, the applicant was arrested pursuant to a search of his vehicle. In the arrest report, the officers claimed that they had permission to search the vehicle and during the search found a quantity of cocaine (9-1/2 ounces) located in a jacket pocket that the applicant took off his person and placed in the trunk of the vehicle. He was subsequently arrested and charged with possession of cocaine with intent to distribute. The applicant filed a motion to suppress based on nonconsensual search. The court granted the motion on the basis that the "defendant did not knowingly and intelligently waive any rights in connection with the search, since he did not have sufficient understanding of the English language to effect a valid waiver." Accordingly, the matter was nolo prossed by the District Attorney.

The record in paragraph 5 above shows the applicant was not convicted of the criminal charges brought against him. However, it was held in Matter of Rico, 16 I&N Dec. 181 (BIA 1977), that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under the former section 212(a)(23) of the Act, now section 212(a)(2)(C) of the Act, if an immigration officer knows or has reason to believe he is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. United States v. Koua Thao, 712 F.2d 369 (8th Cir. 1983) (154.74 grams of opium); United States v. DeLeon, 641 F.2d 330 (5th Cir. 1980) (294 grams of cocaine); United States v. Grayson, 625 F.2d 66

(5th Cir. 1980) (413.1 grams of 74% pure cocaine); United States v. Love, 559 F.2d 107 (5th Cir. 1979) (26 pounds of marijuana); United States v. Muckenthaler, 584 F.2d 240 (8th Cir. 1978) (147 grams of cocaine).

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. The cocaine in this matter (approximately 269 grams of cocaine which is considered a quantity which exceeds an amount for normal use) was found in the pocket of the applicant's coat which he had removed from his person and placed in the trunk of the vehicle he was driving.

The record reflects that the Service, on October 24, 1989 and on December 19, 1989, determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because there was reason to believe he is or has been an illicit trafficker of drugs. The circumstances surrounding the applicant's arrest, the initial charges lodged against him, the large quantity of cocaine in his possession and under his control at the time of arrest give rise to a reason to believe the applicant is a drug trafficker whether or not he was actually convicted. Matter of Rico, supra.

The applicant is, therefore, inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his convictions of conspiracy to possess with intent to distribute (traffic) cocaine (paragraph 4 above), and because there is reason to believe that he is or has been an illicit trafficker of a controlled substance (paragraph 5 above). There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.